



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

[Docket No. FRA-2017-0002-N-11]

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), this notice announces FRA is forwarding for renewal the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On December 21, 2016, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Mail Stop 25, Washington, DC 20590 (Telephone: (202) 493-6292); or Ms. Kim Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Avenue SE, Mail Stop 35, Washington, DC 20590 (Telephone: (202) 493-6132). (These telephone

numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), and 1320.12. On December 21, 2016, FRA published a 60-day notice in the Federal Register soliciting comment on the ICR for which it is now seeking OMB approval. See 81 FR 93725. On February 21, 2017, FRA received one comment in response to the 60-day notice from Mr. Jeffrey S. Hollister, President and CEO of American Railcar Industries (ARI), Inc.

Many of ARI’s comments focus on the substantive merits of the Railworthiness Directive and Revised Railworthiness Directive (collectively RWD or Directive unless stated otherwise) this ICR pertains to and FRA’s authority to issue the RWD. Because these comments are outside the scope of the PRA burden analyzed in this notice, and because the RWD is currently the subject of a legal action brought by ARI, FRA cannot respond to those comments in this notice. Consistent with the PRA, however, FRA is addressing each of ARI’s comments on the accuracy of FRA’s estimates of the burdens of the information collection activities associated with the RWD.

In its comments, ARI expresses the view “FRA dramatically underestimates the burdens created by the information collection activities required by the Directive.” Specifically, ARI alleges FRA’s burden estimates are too low in the following eight instances:

(1) To identify the 14,800 tank cars subject to the Directive, FRA estimated the total annual burden as 80 hours, but ARI estimates 900 hours because “the time

calculated to respond to 100 lessees at 4 hours each is 400 hours, plus FRA failed to account for 500 hours ARI already has invested in supporting customer requests for information on the application of the Directive to their cars”;

(2) To visually inspect the 14,800 tank cars prior to each loaded trip, FRA estimated the total annual burden as 7,400 hours, but ARI estimates 98,667 hours. ARI estimates an average of 20 railcar loadings and 20 minutes for each inspection and the associated documentation requirements;

(3) To inspect and test the sump and bottom outlet valve (BOV) skid groove attachment welds and maintain record results for over 2,200 tank cars, FRA estimates the total annual burden hours as 6,600 hours, but ARI estimates 53,200 hours based on the assumption that each inspection and test will take 26.5 hours;

(4) FRA estimated no total annual burden hours for removal of tank linings to perform visual inspections on 0 percent of the cars to be inspected. ARI estimates 2 hours per car or an additional 1,320 total annual burden hours;

(5) To train and test tank car mechanics who are not qualified on non-destructive testing (NDT) procedures and record qualification, FRA estimated the total annual burden as 132 hours, but ARI estimates 640 hours. ARI asserts FRA did not take into account the need to train 100 inspectors, develop the NDT procedures, or prepare specimens and training procedures;

(6) For tank car notification to all parties of the terms of the Directive and inspection/testing schedule, FRA estimated the total annual burden as 100 hours, but ARI estimates 8,800 hours. ARI notes that “FRA estimates only 100 notices at one hour each while ARI assumes this task requires the development of over 2,200 plans at 4 hours per

car to get each car to a shop, develop a freight plan, shop schedule, and out-of-service time”;

(7) For reports of inspection, test, and repair to FRA, ARI states FRA estimated the total annual burden hours as 3,300 hours, but ARI estimates 6,600 hours. (FRA notes that, in its approved Emergency Clearance submission to OMB, it previously estimated this burden at 33,600 hours, not the erroneous 3,300 hours in its 60-day December 21, 2016, Federal Register notice which ARI cited in its comments.) ARI explains it estimates 3 hours per car/report “in order to include the time ARI spends to review the reports, correct factual errors, store results, update the database and provide summaries to the FRA”; and

(8) For tank car facility requests to tank car owners for written permission and approval of qualification and maintenance programs, FRA estimated the total annual burden as 7 hours, but ARI estimates 660 hours for 330 cars (15%) which will require owner’s approval and instructions prior to repair which will require 2 hours per car.

After careful consideration of ARI’s comments and estimates, FRA reviewed its own estimates and either validated its initial estimates or adjusted its estimates in light of ARI’s comments. As a result, FRA now estimates a total annual burden for this ICR in excess of the 68,953 hours originally approved by OMB on October 18, 2016, in FRA’s Emergency Clearance submission. FRA’s modified burden estimates are as follows:

(1) To identify the railroad tank cars subject to the RWD, FRA stands by its original estimate of 20 identifications/reports – one report for each of the estimated 20 tank car owners/100 lessees (5 lessees per tank car owner are included/incorporated in each identification/report) – and 80 hours (4 hours per identification/report). FRA

believes ARI's estimate of 900 hours is excessive because tank cars built to the ARI or ACF Industries, LLC (ACF) 300 stub sill design and subject to the Directive are easily identifiable based upon their certificates of construction which all tank car owners are required to retain;

(2) To visually inspect the tank cars prior to each loaded move, FRA has revised its previous estimate of 7,400 total annual burden hours to 14,529 total burden hours. FRA believes the number of annual load moves is 6 and each visual inspection/record takes approximately 10 minutes to complete, while ARI estimates there are 20 annual load moves per year and each visual inspection/record takes 20 minutes to complete. To arrive at its total burden of 98,667 hours, ARI more than triples the number of annual load moves (20 moves instead of 6 moves) and doubles the time to complete each visual inspection/record (20 minutes instead of 10 minutes). FRA subject matter experts state the number of annual load moves is well under 10 and completing the required visual inspection/record is not a time consuming process and should take significantly less than 20 minutes;

(3) To inspect and test the sump and BOV skid groove attachment welds and maintain record results, FRA has revised its estimate to reflect the 2,175 cars subject to this requirement (15 percent of the estimated fleet of 14,500 cars subject to the Directive)¹ and has increased its estimate of the average time it takes to complete this requirement from 2 hours to 19 hours (i.e., 4 hours for cleaning, inbound inspection, and estimating (write-up), plus 3 hours for inspection, testing, records preparation for visual and ultrasonic testing, plus 12 hours for car repairs). Thus, FRA has raised its previous

¹ FRA recognizes the total fleet of cars subject to this RWD is approximately 14,800, but based on written and verbal reports provided to FRA to date, FRA understands that 300 cars have already been inspected under terms meeting the RWD.

estimate of 6,600 total annual burden hours to 41,325 total annual burden hours. FRA's adjusted estimate of 41,325 hours approximates the ARI asserted total burden of 53,200 hours. Again, the experience of FRA subject matter experts supports this revised number as closer to the true burden than either FRA's initial estimate or ARI's estimate in its comments;

(4) For removal of the tank lining as part of the visual inspection/testing/repair requirement, FRA believes it will be necessary to remove the tank lining in 435 tank cars to conduct the inspections and tests this RWD requires (20% of the 2,175 cars to be inspected under this RWD (again, 2,175 is 15% of the estimated total fleet subject to the RWD)). In its comments, ARI estimates it will be necessary to remove the tank lining in 660 cars (approximately 30 percent of the cars required to be inspected under this RWD). FRA also estimates this process will take an average of 2 hours per car to complete. FRA's revised burden total amounts to 870 hours while ARI's total burden is 1,320 hours. FRA believes this estimate is closer to the actual burden, as supported by the experience of its subject matter experts;

(5) To train and test tank car mechanics who are not qualified on NDT procedures and record qualification, FRA has revised its original estimate of the total number of individuals who will need such training to 90. FRA now estimates it will take approximately 2 hours to train each person (for a total annual burden hours of 180 hours). ARI estimates 100 individuals will be trained and it will take approximately 6.4 hours to complete each person's training (for a total annual burden of 640 hours). FRA and ARI are in the same vicinity concerning the number of individuals to be trained, but disagree on the average time to complete the necessary training. FRA has doubled its original

average time estimate and believes two hours is more than adequate to complete this requirement;

(6) For tank car notification to all parties of the terms of the Directive and inspection/testing schedule, FRA is maintaining its estimate of 100 notifications to the affected parties (i.e., tank car lessees), but is doubling the average time to complete each notification to 2 hours (for a total burden of 200 hours). ARI calculates its estimated burden of 8,800 hours to include 2,200 cars and 4 hours to complete each required notification. However, ARI misinterprets the requirement and applies the notifications to **cars** rather than **all parties under contract to tank car owners**. Consequently, it vastly overestimates the number of notifications. ARI's average time estimate of 4 hours per notification is double FRA's revised estimate and because it is based on cars, not parties under contract to the tank car owners, it is not based on facts and is unrealistic;

(7) For reports of inspection, test, and repair information to FRA, FRA already accounted for this burden in its earlier 19-hour estimate in (3) above for inspection, testing, repair, and corresponding records that totaled 41,325 hours. ARI estimated this burden at 53,200 hours as explained in (3) above, but then includes an additional burden here of 6,600 hours. Thus, ARI has mistakenly double-counted this burden;

(8) For tank car facility requests to tank car owners for written permission and approval of qualification and maintenance programs, FRA stands by its original total annual burden estimate of 7 hours (20 written requests plus 20 written permissions at 10 minutes each). FRA believes ARI's estimate of 660 hours misinterprets the requirement. ARI includes a written permission by the tank car owner for 330 cars (15% of 2,220 cars)

rather than for the qualification and maintenance program operated by the tank car facility. FRA does not believe it will take triple the time (60 minutes as opposed to 20 minutes) to complete each written request and triple the time to complete each written permission (again 60 minutes as opposed to 20 minutes). Thus, FRA is maintaining its original estimate for this requirement;

(9) For reports by tank car facilities to tank car owners of all work performed and all observed damage, deterioration, failed components, or noncompliant parts under 49 CFR 180.513, FRA estimates there will be 2,175 repair reports/records and it will take approximately 12 hours to complete each weld defect repair and associated report/record for a total annual burden of 26,100 hours. ARI did not state its estimate for this requirement in its comment. Nevertheless, based on its stated total burden of 176,092 hours, it appears ARI estimated a total of 2,200 reports would be completed with an average time of 2.411 hours to complete each repair report/record (for a total of 5,305 hours). FRA believes ARI underestimated the time necessary to complete repairs for weld defects and the corresponding report/record and, thus, the true burden. FRA is once again relying on the experience and knowledge of its subject matter experts; and

(10) Finally, regarding the new exemption provision in the Revised Directive, FRA estimates 10 tank car owners will request exemptions from all or part of the requirements of the RWD for a total of 149 hours (14.9 hours per petition). Neither FRA nor ARI accounted for this potential burden previously.

Overall, FRA's modified estimates amount to 83,440 hours. For the reasons outlined above, FRA believes this revised total is more accurate and more reasonable

than its original estimates² and ARI's estimate of 176,092 hours.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of this notice's publication. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summary below describes the ICR and its expected burden. FRA is submitting this renewal request for clearance by OMB as the PRA requires.

Title: Railworthiness Directive (RWD) RWD 2016-01 [REVISED] (previously approved by OMB under the title Railworthiness Directive for Certain Tank Cars Equipped with Bottom Outlet Valve Assembly and Constructed by American Railcar Industries and ACF Industries).

OMB Control Number: 2130-0616.

Abstract: An FRA investigation identified a certain design of specification DOT-111 tank cars that ARI and ACF manufactured using welding practices not in conformance with Federal regulations and Association of American Railroads' welding

² FRA notes its December 21, 2016, 60-day Federal Register notice contained an error in math. The total burden in that notice should have been 30,240 hours higher (for a total burden of 53,164 hours). See 81 FR 93725.

specifications. The cars are built to the ARI and ACF 300 stub sill design and equipped with a two-piece cast sump and BOV skid. As a result of the non-conforming welding practices, these cars may have substantial weld defects at the sump and BOV skid groove attachment welds, potentially affecting each tank's ability to retain its contents during transportation. On September 30, 2016, FRA issued the initial RWD. On November 18, 2016, FRA issued a Revised Directive. The Revised Directive requires owners to: (1) identify tank cars in their fleet covered by the Directive; and (2) ensure appropriate inspection and testing of each tank car's sump and BOV skid groove attachment welds to ensure no flaw exists which could result in the loss of tank integrity. This ICR applies to the Revised Directive.

Type of Request: Regular clearance of an information collection previously approved under emergency processing procedures.

Affected Public: Businesses (tank car owners, shippers, and tank car facilities).

Form(s): N/A.

Total Estimated Annual Responses: 92,250.

Total Estimated Annual Burden: 83,440 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address:

oira_submissions@omb.eop.gov.

Comments are invited on the following: Whether the proposed collections of information are necessary for DOT to properly perform its functions, including whether

the information will have practical utility; the accuracy of DOT's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: 44 U.S.C. 3501–3520.

Sarah L. Inderbitzin,
Acting Chief Counsel.

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